



County Administrative Office

Gregory C. Devereaux
Chief Executive Officer

April 1, 2016

VIA EMAIL sgmps@water.ca.gov

California Department of Water Resources
Attn: Lauren Bisnett
P.O. Box 942836
Sacramento, CA 94236

Re: Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

The County of San Bernardino (County) appreciates the opportunity to provide these comments to the California Department of Water Resources (DWR) Draft Groundwater Sustainability Plan Emergency Regulations (Regulations) developed under the Sustainable Groundwater Management Act (SGMA).

Several adjudicated groundwater basins are located in the County, the boundaries of which are not coterminous with the Bulletin 118 basin boundaries. The discrepancy in basin boundaries results in what has been described as “fringe areas,” areas which lie outside the adjudicated basin boundaries but within the Bulletin 118 boundaries.

Within the County, most of these fringe areas are de minimis in size and typically have nominal, if any, groundwater extraction activity. The County has reviewed the available science for the fringe areas adjacent to one adjudicated area, which indicated that the volume of saturated alluvial material for groundwater production in these de minimis fringe areas were insufficient to have a material effect on sustainable groundwater management. As such, we believe that scientific data may be available to show that most of these de minimis fringe areas do not meet the threshold definition of an “aquifer” as set forth in Section 341(f) of Title 23 of the Code of Regulations and should, therefore, be deemed included in the management of the adjacent adjudicated basin.

Because of the low significance of most of these fringe areas, it is unlikely that a local agency will seek to be the groundwater sustainability agency (GSA) for such fringe areas. While some watermasters may seek basin boundary adjustments for some of these fringe areas, it is likely that some fringe areas will remain. As such, the County would become the default GSA pursuant to Water Code section 10724, if the County did not opt out pursuant to Water Code section 10724(b). Should the County opt-out of the cost and responsibility for management of these insignificant areas, the resulting State management essentially undermines one of the goals of SGMA: to provide for local control and management of local groundwater.

The Regulations as drafted, unfortunately, do not provide flexibility to permit an adjudicated basin’s fringe area to be managed effectively under a groundwater sustainability plan (GSP), which imposes a management standard reflective of the low impact and significance of these fringe areas. Instead, for these fringe areas, the Regulations impose an “all or nothing”

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approach that provides relatively little practical benefit to overall basin management but at a significant cost to the County and its constituents.

In essence, pursuant to the Regulations, the County has two options:

- (1) Serve as the GSA and incur significant costs to its general fund to generate, implement, and manage a GSP for only that de minimis fringe area (Regulations § 354.20.), or
- (2) Incur significant costs to its general fund to generate, implement, and manage an alternative plan for the entirety of the basin, including the adjudicated area. (Regulations § 358.4.)

The Regulations allow for a GSA to divide a basin into one or more management areas “if local conditions for one or more critical parameters differ significantly from those of the basin at large, and if the Agency has determined that subdivision into management areas will facilitate implementation of the Plan.” (Regulations § 354.20.) However, designated adjudicated basins are exempt from forming GSAs and developing GSPs. (Water Code section 10720.8.) As such, the Regulations seemingly subject otherwise exempted adjudicated basins, which continue to be subject to the continuing jurisdiction of the Court, to DWR evaluation if an alternative plan submitted for the entirety of a basin includes an adjudicated area.

In order to align the Regulations with the statutory intent of SGMA, we respectfully recommend the addition of two provisions to Article 9 Alternatives and Adjudicated Areas of the Regulations to provide local agencies with the flexibility to effectively manage de minimis fringe areas and to adopt a presumption of sustainability for those portions of a basin subject to an adjudication action recognized in Water Code section 10720.8. Our recommended revisions to the Regulations are contained in the attached document with our changes to Article 9 tracked for your convenience. The attached document also incorporates the recommended revisions to Article 9 submitted by Rural County Representatives of California and the California State Association of Counties on March 30, 2016, which the County supports.

Please note that the County Board of Supervisors has not adopted an official position on the Regulations. However, to assist DWR with its efforts to revise the Regulations, the County Administrative Office has provided the above comments.

We are available to provide any further assistance so that DWR clearly understands the comments submitted by the County. Also, should you wish to discuss the County's comments, I can be reached at (909) 387-4384. Additionally, Josh Candelaria of the County Administrative Office's Legislative Affairs Unit may be reached at (909) 387-4821.

Sincerely,



Bob Page
Principal Management Analyst, Special Projects
County Administrative Office
County of San Bernardino

ARTICLE 9. Alternatives and Adjudicated Areas

§ 358. Introduction to Alternatives and Adjudicated Areas

This Article describes the methodology and criteria for the submission and evaluation of alternatives to a Plan and for adjudicated areas.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Section 10733.2, Water Code.

§ 358.2. Adjudicated Areas Subject to Water Code Section 10720.8

The watermaster or a local agency shall submit the following to the Department for an adjudicated area described in Water Code Section 10720.8:

- (a) By April 1, 2016, a copy of a governing final judgment, or other judicial order or decree, and any amendments entered before April 1, 2016.
- (b) Within 90 days of entry by a court, a copy of any amendment made and entered by the court to the governing final judgment or other judicial order or decree on or after April 1, 2016.
- (c) By April 1, 2016, and annually thereafter, a report containing the following information to the extent available for the portion of the basin subject to the adjudication:
 - (1) Groundwater elevation data unless otherwise submitted pursuant to Water Code Section 10932.
 - (2) Annual aggregated data identifying groundwater extraction for the preceding water year.
 - (3) Surface water supply used for or available for use for groundwater recharge or in-lieu use.
 - (4) Total water use.
 - (5) Change in groundwater storage.
 - (6) The annual report submitted to the court.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Section 10720.8, 10733.2, Water Code.

§ Section 358.3. Management of Areas Adjacent to Adjudicated Areas

The watermaster or local agency for an adjudicated area described in Water Code Section 10720.8 may demonstrate to the Department that areas immediately adjacent to an adjudicated basin have an insufficient volume of saturated alluvial to have material effect on sustainable groundwater management and, therefore, do not meet the threshold definition of an “aquifer” as set forth in Section 341(f) of these regulations. Such assessment must be based on available science and submitted to the Department by January 1, 2017, and every five years thereafter. Upon Department approval, such areas shall not be subject to separate management pursuant to Sections 354.20 or 358.4 of these regulations.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Section 10720.8, 10733.2, Water Code.

§ 358.4. Alternatives to Groundwater Sustainability Plans

- (a) A local agency that submits an alternative shall demonstrate that the alternative applies to the entire basin and satisfies the ~~eligibility~~ requirements of Water Code Section 10733.6, ~~including an assessment that the alternative satisfies the objectives of the Act,~~ and that the alternative is within a basin that is in compliance with Part 2.11 of the Water Code (commencing with Section 10920).
- (b) An alternative shall be submitted to the Department by January 1, 2017, and every five years thereafter.
- (c) A local agency shall include the following information based on the type of alternative submitted:
 - (1) An alternative submitted pursuant to Water Code Section 10733.6(b)(1) shall include a copy of the groundwater management plan.
 - (2) An alternative submitted pursuant to Water Code Section 10733.6(b)(2) that is not an adjudicated area described in Water Code Section 10720.8 shall do the following:
 - (A) Demonstrate that the adjudication submitted to the Department as an alternative is a comprehensive adjudication as defined by Chapter 7 of Title 10 of Part 2 of the Code of Civil Procedure (commencing with Section 830).
 - (B) Provide the Department with a copy of the adjudication order and any annual report submitted to the court pursuant to the adjudication.
 - (C) A local agency submitting an alternative based on an adjudication action described in Water Code Section 10733.6 (b)(4)(B) may, notwithstanding Water Code Section 10733.6 (c), submit the adjudication action to the Department for evaluation after January 1, 2017.

- (3) An alternative submitted pursuant to Water Code Section 10733.6(b)(3) shall demonstrate that no undesirable results are present in the basin or have occurred ~~between January 1, 2005, and January 1, 2015~~ for a period of at least 10 years. Each subsequent submission shall demonstrate that no undesirable results are present in the basin or have occurred for the preceding ten year period.
- (e) A local agency shall include an explanation of the manner in which the alternative satisfies the objectives of the Act for the basin ~~functional equivalence of terms and concepts used in the alternative with the substantive and procedural requirements of the Act and this Subchapter.~~
- (f) If a local agency submits an alternative for a basin that includes areas outside its jurisdiction or service area, the local agency shall enter into agreements with any local agency or other entity from which information will be required to comply with reporting requirements for the alternative and to demonstrate that basin satisfies ongoing requirements of the alternative. An agreement shall include a list and map of all local agencies or entities that are party to the agreement.
- (g) After an alternative has been approved by the Department, if one or more Plans are adopted within the basin, the alternative and any agreements shall be revised, as necessary, to reflect any changes that may have resulted from adoption of the Plan, and the local agency responsible for the alternative and Agency responsible for the Plan shall enter into an agreement that satisfies the requirements of Section 357.4.
- (h) Any person may provide comments to the Department regarding an alternative in a manner consistent with Section 353.8.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Section 10727, 10733.2, 10727.2, 10733, 10733.6, 10733.8, Water Code.

§ 358.6. Department Evaluation of Plan Alternatives

- (a) The Department shall evaluate an alternative to a Plan consistent with Article 6 of these regulations to determine whether the alternative satisfies the goals of the Act to achieve groundwater sustainability through local management and avoid undesirable results, including to adjacent groundwater basins.
- (b) If the basin for which an alternative to a Plan is submitted pursuant to Water Code Section 10733.6(b)(3) includes an adjudicated area described in Water Code Section 10720.8 that is in compliance with section 358.2 of these regulations, it shall be presumed that the portion of the basin that is within such adjudicated area has operated within its sustainable yield during the applicable preceding ten-year period.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Section 10720.8, 10733.2, 10733.6, Water Code.